

MINUTES

STANDING COMMITTEE ON THE MODEL UTAH CRIMINAL JURY INSTRUCTIONS

Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114

Wednesday, June 7, 2017
12:00 p.m. to 1:30 p.m.
Judicial Council Room

PRESENT

Judge James Blanch, Chair
Keisa Williams, Staff
Mark Field
Sandi Johnson
Karen Klucznik
Judge Brendon McCullagh
Steve Nelson
Nathan Phelps
Jesse Nix
David Perry
Scott Young

EXCUSED

Judge Michael Westfall
Linda Jones

1. Welcome

Judge Blanch

Judge James Blanch welcomed everyone to the meeting. Judge Blanch noted there were enough members to meet the requirements of a quorum, although some members need to leave early which will cause the loss of a quorum.

Nathan Phelps moved to approve the minutes from the April 5, 2017 meeting as written. Steve Nelson seconded the motion and it passed unanimously.

2. State v. Hummel and Relevant Jury Instructions

Judge Blanch

Judge Blanch opened the discussion regarding the decision in *State v. Hummel* and how it should affect the committee's stock jury instructions. Judge Blanch stated that the jury must be unanimous on each element of an offense, not each theory of an element. Ms. Klucznik and Mr. Field stated that *Hummel* did not adequately resolve the issue addressed by *State v. Johnson*, 821 P. 2d 1150 (Utah 1991), regarding unanimity on aggravated murder. Why is a specific aggravator not an "element?" In aggravated murder, each aggravator is an alternative element and each must be proven beyond a reasonable doubt. In addition, Mr. Field stated that statutory aggravators have been described as "alternate elements," which is confusing after *Hummel*. The

Hummel case was not precise enough about what constitutes an element and what constitutes a theory. There are alternative means of fulfilling an element. It's different if you have alternative elements. Juries must be unanimous on alternative elements. For example, in aggravated murder, you must find unanimously that they killed a police officer, or poisoned a police officer, or it was for pecuniary gain. Ms. Johnson disagreed based on the way the court described the *Johnson* case in *Hummel*.

Ms. Williams read the statement at the end of paragraph 30 in *Hummel*: "We have never required unanimity – or sufficient evidence – on alternative manners or means of fulfilling an element of a crime. Instead, *Johnson* and the cases it relied on required sufficient evidence on alternative elements of a crime..." Mr. Field stated that the question is then 'what is an alternative element?' For example, in Aggravated Sexual Abuse of a Child, is each aggravator an "element"? Mr. Field and Ms. Klucznik say yes. Ms. Johnson says no. Mr. Nelson stated that aggravated murder may be a special circumstance because of the complicated 8th amendment qualifications, which is why they may be considered elements. Ms. Klucznik stated that she thinks the law is clear, whether you call it an aggravator or not, if the jury must find it beyond a reasonable doubt, it's an element. Ms. Johnson said that the fact that there is an aggravator, is an element, what the aggravator might be, is a theory. Ms. Klucznik disagrees and feels it is contrary to *Johnson*. Ms. Johnson said that there may have been problems with the jury instructions in *Johnson*. If they had given a special verdict form, then they wouldn't have needed unanimity.

After a detailed discussion, the committee concluded that aggravated murder is different because of the narrowing requirement for death penalty cases. The committee then discussed whether the committee should address the *Hummel* decision in an instruction, or let judges address it on a case-by-case basis and/or when a jury asks a unanimity question. The committee concluded that it should create a new jury instruction under the stock instructions titled "Jury Unanimity" and add a committee note to CR216 Jury Deliberations, directing judges and practitioners to the *Hummel* case. The committee determined that the language in paragraph 17 in *Hummel* should be used as the new jury instruction with a few minor changes. Ms. Williams will draft both the new instruction and the committee note for review at the next meeting.

3. Justification Defense Instructions

Mark Field

The committee did not have time to discuss these instructions. They will be added to the agenda for the next meeting.

4. Other Business

Committee

Judge Blanch discussed the idea of asking judges to send unique jury instructions to Keisa Williams for the committee to review for possible publication. Judge Blanch noted that he and many other judges often spend a great deal of time crafting jury instructions for unique cases and the committee may benefit from them. Judge Blanch suggested seeking advice from Brent Johnson about sending an email to the judges in third district asking for such instructions. Ms. Klucznik suggested asking the judges to include any specific circumstances in the case that may have an effect on the instructions.

Ms. Williams noted that the public comment period on the Drug Offense Instructions ends on June 12, 2017 and there has been one comment thus far regarding the term “factors relevant.”

5. Adjourn

Committee

The meeting was adjourned at 1:35 p.m. The next meeting is Wednesday, September 6, 2017.